

Minutes of the
Board of Minerals and Environment Meeting
Holiday Inn
1525 West Havens Street
Mitchell, South Dakota

9:00 a.m. CDT
May 19-20, 2004

CALL TO ORDER AND ROLL CALL: Chairman Richard C. Sweetman called the meeting to order. Secretary Kathy Johnson noted that a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Kathy Johnson, Chuck Monson, Linda Hilde, Brian Radke, and Mike DeMersseman.

BOARD MEMBERS ABSENT: Pat Healy and Wilbert Blumhardt.

OTHERS: See attached attendance sheets.

APPROVAL OF MINUTES FROM APRIL 15, 2004, MEETING: Motion by DeMersseman, seconded by Monson, to approve the minutes from the April 15, 2004, Board of Minerals and Environment meeting as mailed. Motion carried.

SURFACE MINING ISSUES: Eric Holm was administered the oath by Brian Radke and testified regarding releases of surety and liability, transfers of liability and release of surety (see attached matrix sheet).

Release of Liability and Surety: Motion by Monson, seconded DeMersseman, to release liability for one site in Tripp County and \$1,000 surety for Richard L. Mahoney, Winner, SD, Mine License No. 96-58 1. Motion carried.

Transfer of Liability: Motion by Radke, seconded by Hilde, to transfer liability for one site in Potter County from Wager Construction, Gettysburg, SD, Mine License No. 98-646 to Potter County Highway Department, Gettysburg, SD, Mine License No. 83-147. Motion carried.

Release of Liability: Motion by Monson, seconded by Hilde, to release liability for one site in Lawrence County for Spike Hazelrigg, Box Elder, SD, Mine License No. 96-585, and to release liability for two sites in Day County for Lien Transportation Company, Aberdeen, SD, Mine License No. 84-257. Motion carried.

Acceptance of Surety Increases: Motion by DeMersseman, seconded by Radke, to accept rider increasing surety 7512548 to \$591,800 for Cold Spring Granite Company, Cold Spring, MN, Mine Permit No. 8, and to accept rider increasing surety 75512547 to \$161,500 for Cold Spring Granite Company, Cold Spring, MN, Mine Permit No. 373. Motion carried.

Mr. Holm presented the *2003 Summary of the Mining Industry in South Dakota* report, which was prepared by the DENR Minerals and Mining Program.

OIL AND GAS CASE NO. 3-2004, LUFF EXPLORATION COMPANY: Chairman Sweetman turned the gavel over to Lee McCahren, whom he had appointed as hearing chairman. Mr. McCahren opened the hearing at 9:15 a.m. CDT.

John Morrison, attorney from Bismarck, represented Luff Exploration Company. Brent Wilbur, attorney from Pierre, appeared as local counsel for Luff Exploration Company.

Charles McGuigan, assistant attorney general, represented the Department of Environment and Natural Resources.

No petitions to intervene were received.

The purpose of the hearing was to consider the application of Luff Exploration Company to amend the applicable orders for the Buffalo Field so as to form a single spacing unit consisting of the N $\frac{1}{2}$ of Section 17 and the North $\frac{1}{2}$ of Section 18, Township 22 North, Range 4 East of the Black Hills Meridian, Harding County, SD, and to allow the drilling of multiple horizontal laterals into the Red River "B" Zone at any location not closer than 500 feet to the boundary of said spacing unit, and to authorize the issuance of a permit for a horizontal well.

Richard George, manager of engineering, was administered the oath by Mr. McCahren, and testified on behalf of Luff Exploration Company.

Exhibits offered and received into the record for Luff Exploration Company:

Exhibit 1 - General Locator Map

Exhibit 2 - Map showing today's request for a spacing unit and the expanded unit area that has been applied for and heard by the board in July 2004

Exhibit 3 - Explanation of Luff Exploration Company's request

Exhibit 4 - Land plat showing the spacing unit

Exhibit 5 - Ownership information

Exhibit 6 - Top Red River Structure Map - existing NBRRU area, requested spacing unit, expanded unit area applied for (July 2004 hearing), and existing spacing units

Exhibit 7 - Top Red River Structure Residual from regional trend - existing NBRRU area, requested spacing unit, expanded unit area applied for (July 2004 hearing), and existing spacing units

Exhibit 8 - Rate vs. Time curve for Steams M-17 - Buffalo

Exhibit 9 - Water cut curve for Steams M- 17 - Buffalo

Exhibit 10 - Rate vs. Time curve for Table Mountain #1-7F -Buffalo

Exhibit 11 - Water cut curve for Table Mountain #1-7F - Buffalo

Exhibit 12 - Overall curve for North Buffalo Red River Unit - Buffalo

Exhibit 13 - Luff s requested spacing units optimum for secondary recovery as well as primary recovery

Exhibit 14 - Spacing units/secondary recovery units larger than 320 acres with 500-foot setbacks

Exhibit 15 - Summary of Oil & Gas Case 3-2004

Mr. McGuigan offered DENR Exhibit 1, the department file on the application. It was accepted into the record.

Notice of the public hearing was published on April 15 and 22, 2004, in the Black Hills Pioneer, the Pierre Capital Journal, the Rapid City Journal, and the Nation's Center News. Affidavits of Publication are on file in the Department of Environment and Natural Resources, Rapid City office.

Hearing Chairman McCahren requested board action.

Motion by DeMersseman, seconded by Radke, to approve Luff Exploration Company's application for Case No. 3-2004, to adopt the Findings of Fact, Conclusions of Law, and Order and, to authorize Mr. McCahren to execute the Order. Motion carried.

Mr. McCahren declared the hearing closed and turned the gavel back over to Chairman Sweetman.

OIL AND GAS CASE NO. 4-2004, LUFF EXPLORATION COMPANY: Luff Exploration Company withdrew this application.

OTHER BUSINESS: Fred Steece noted that the risk compensation in compulsory pooling cases rules (74:10:18:01 through 74:10:18:03) that the board adopted at its April meeting were approved by the Interim Rules Committee.

July Board Meeting: Motion by DeMersseman, seconded by Hilde, to hold the July 15-16, 2004, board meeting in Buffalo. Motion carried.

CONTESTED CASE HEARING IN THE MATTER OF A PROPOSED MUNICIPAL SOLID WASTE LANDFILL TO THE CITY OF MITCHELL: Chairman Sweetman turned the gavel over to Lee McCahren, hearing chairman, for this matter.

Carl Koch, attorney from Mitchell, and Brent Wilbur, attorney from Pierre, represented the city of Mitchell.

James Taylor, attorney from Mitchell, represented the intervenors, Jeffrey, Linda, Thomas, and Roberta McEntee and Reiersen's, Inc.

Robert and Laura Weisz, intervenors, were not represented by an attorney and did not participate in the formal portion of the hearing.

Charles McGuigan, assistant attorney general, represented the Department of Environment and Natural Resources.

Mr. McCahren opened the hearing at 11:00 a.m.

Mr. McGuigan provided a summary of the concerns expressed by the opposition.

Mr. McGuigan also noted that state law requires that any organization requesting permission to build a new landfill receive approval from the county commission. The city received a zoning variance. The city also received county approval, but it was only good for two years. When the city submitted the application for a landfill the county approval was in place and valid. It expired in April 2004, before this matter could come before the board as a contested case. The city has resubmitted for county approval and the department recommends that if the permit is issued by the board be contingent upon county approval being in place before construction of the new landfill can begin.

Members of the board and the parties introduced themselves.

Mr. McCahren requested testimony from members of the public regarding the application. The public comments were considered informal and were not included in the official record.

The following members of the public testified against the permit application:

Marlyn Buss, Lake Crystal, MN
Beverly Carlson, Mitchell, SD
Bob Weisz, Mitchell, SD
Lyle Sunderland, Mitchell, SD
Norma Harris, Mitchell, SD
Mike Ostbye, Mitchell, SD
Rich Hofer, Mitchell, SD
Sherry Anderson, Mitchell, SD
Paul Tobin, Mitchell, SD

Following the public testimony, the board toured the current city landfill, the water treatment plant, and the proposed new landfill site.

At 3:00 p.m. Mr. McCahren opened the formal hearing.

Witnesses administered the oath and testifying on behalf of the city of Mitchell:

Tim McGannon, city of Mitchell, public works director
Ron Olson, city of Mitchell, street and sanitary superintendent
Tim Kenyon, Leggette, Brashears & Graham, Sioux Falls
Jay Koch, Helms & Associates, Aberdeen

Exhibits offered and received into the record for the city of Mitchell:

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City Exhibit A - Includes Exhibits A-01 through A-54 referenced by Tim McGannon during his testimony - History of public meetings, minutes, landfill history

City Exhibit B - Exhibits B-01 through B-09 referenced by Ron Olson during his testimony - Dependable Sanitation recycling contract, asphalt concrete recycling, comprehensive solid waste source reduction and recycling plan for the city of Mitchell, landfill total current cost of closure and postclosure costs, siting a new sanitary landfill

City Exhibit C - Includes Exhibits C-01 through C-36 referenced by Tim Kenyon during his testimony - Hydrologic assessment for proposed Mitchell regional landfill

City Exhibit D - Includes Exhibits D-01 through D-26 referenced by Jay Koch during his testimony - Information for County Zoning Board Conditional Use Permit, Mitchell Regional Landfill, Mitchell Landfill - SD DENR presubmission meeting information, landfill design information, proposed wetland mitigation

City Exhibit DD - Includes Exhibits DD-01 through DD-47 referenced by Jay Koch during his testimony - Mitchell solid waste study prepared by Helms & Associations, July 1999

City Exhibit E - Landfill permit application

City Exhibit EE - Addendum to landfill permit application

Witness administered the oath and testifying on behalf of the Department of Environment and Natural Resources (DENR):

Steve Kropp, natural resources project engineer, DENR, Pierre

Exhibits offered and received into the record for DENR:

Department Exhibit 1 - Official department file
Department Exhibit 2 - Contested case materials
Department Exhibit 3 - Draft permit
Department Exhibit 4 - Power Point timeline
Department Exhibit 5 - Power Point permit conditions

Witnesses administered the oath and testifying on behalf of the Intervenors:

Ray Rylance, Watertown
Tom McEntee, Reiersen's, Inc.
Jeff McEntee, Reiersen's, Inc.

Exhibits offered and accepted into the record for the Intervenors:

Intervenors Exhibit 1 - Geotek "Preliminary Hydrogeologic Assessment"
Intervenors Exhibit 2 - Geotek "Hydrogeologic Assessment Phase 2"

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Intervenors Exhibit 3 - Anderson Contract
Intervenors Exhibit 4 - SDCL 34A-6-1.1 and 34A-6-1.2
Intervenors Exhibit 5 - Wastewater Irrigators, Inc. Contract
Intervenors Exhibit 6 - Mitchell Solid Waste Study
Intervenors Exhibit 7 - North lagoon seepage photos
Intervenors Exhibit 8 - East and northeast lagoon seepage photos
Intervenors Exhibit 9 - West lagoon seepage photos
Intervenors Exhibit 10 - Drainage at 257th Street photos
Intervenors Exhibit 11 - May 16, 2004 photos - storm drainage at 257th Street

Following the testimony, Mr. McCahren requested board action.

Motion by DeMersseman, seconded by Hilde, to approve the solid waste landfill permit for the city of Mitchell contingent upon the city receiving county approval in accordance with SDCL 34A-6-103.

Board members DeMersseman, Hilde, Sweetman, Johnson, Monson, and McCahren spoke in favor of the motion.

Mr. Radke stated that the city should be required to test the water seeping from the lagoons. The city should also be required to repair the lagoons. He also stated that there is sufficient evidence to warrant placing a condition on the permit requiring the city to plant a bigger variety and more hardy trees surrounding the facility.

The motion carried with Radke casting the only dissenting vote.

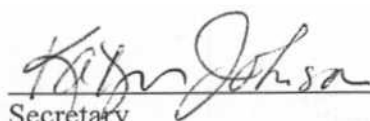
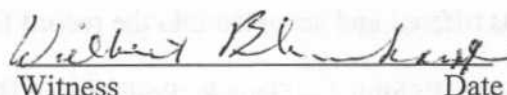


Chairman McCahren stated that the board will consider Findings of Fact, Conclusions of Law and Order at the June 16-17, 2004, meeting in Pierre.

He declared the hearing closed and turned the gavel back over to Chairman Sweetman.

A court reporter was present at the meeting and a transcript may be obtained by contacting Jan Homer, 116 East 3rd Avenue, Mitchell, SD 57301, phone number (605)996-6350.

The meeting was also recorded and copies of the cassette tapes may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol, Pierre, SD 57501, phone number (605)773-3886.

ADJOURNMENT: Chairman Sweetman declared the meeting adjourned at 2:30 p.m. CDT on May 20, 2004

	
Secretary	Witness
	
Date	Date

South Dakota Board of Minerals & Environment

May 19, 2004

License/Permit Holder	License Permit	Site No.	Surety Amt.	Surety No.	Surety Company/Bank	DENR Recommendation
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Release of Liability and Surety:

Richard L. Mahoney Winner, SD	96-581		\$1,000	12963	First National Bank, Pierre	Release liability and \$1,000.
		581001	Section 13; T100N-R76W, Tripp			

Transfer of Liability:

Wager Construction Gettysburg, SD	98-646		\$500	16411	First National Bank, Pierre	Transfer liability.
		646001	NE1/4 Section 29; T120N-R74W, Potter			

Transfer to:

Potter County Highway Department Gettysburg, SD	83-147		EXEMPT	NA	NA	
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Release of Liability:

Spike Hazelrigg Box Elder, SD	96-585		\$1,000	243105120	Dakota State Bank, Pierre	Release liability.
		585004	NW1/4 Section 9; T7N-R3E, Lawrence			

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License/Permit Holder	License/ Permit	Site No.	Surety Amt.	Surety No.	Surety Company/Bank	DENR Recommendation
<u>Releases of Liability:</u>						
Lien Transportation Company Aberdeen, SD	84-257		\$20,000	5733034	Ohio Farmers Insurance Company	Release liability.
		257008	E1/2 NE1/4, SW1/4 NE1/4, S1/2 NW1/4, & NW1/4 SW1/4 Section 11; T122N-R53W, Day			
		257009	NW1/4 Section 12; T122N-R53W, Day			
<u>Acceptance of Surety Increases:</u>						
Cold Spring Granite Company Cold Spring, MN	8		\$202,700	7512548	National Fire Insurance Company of Hartford	Accept rider increasing surety 7512548 to \$591,800.
Cold Spring Granite Company Cold Spring, MN	373		\$60,000	7512547	National Fire Insurance Company of Hartford	Accept rider increasing surety 7512547 to \$161,500.

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Holiday Inn
MitchellDate 5-19-04

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Eric Holm	Pierre	DENR
John Morrison	Box 2798 Bismarck, ND 58501	Luff Exploration
Derric Iles	Vermillion	Geological Survey - DENR
Tom HAGGAR	Vermillion	Geological Survey - DENR
Richard Geor	1580 Lincoln Street Suite 850 Denver, CO 80203	Luff Exploration
GL McGillivray	2050 W Main, Rapid City	DENR
Harold Campbell	Mitchell	Mitchell Daily Republic
Steven Kapp	Pierre	DENR
Tim KEMPSON	Wentworth	LBG/City of Mitchell
Ron Olson	Mitchell	City of Mitchell
Tim McGowan	Mitchell	City of Mitchell
FRED STEECE	RAPID CITY	DENR
Jay Koch	Aberdeen	Helms & Assoc/City of Mitchell
Carl Koch	Mitchell	Atty. Representing City of Mitchell
Kevin Elliott	Pierre	DENR
Mary Jo Jones	Pierre	SPL
Jim Wendte	Pierre	SD DENR
Margaret Buss	Lake Crystal, MN	
Marlyn Buss	Lake Crystal, MN	
Tom McIntee	Mitchell	Reiersen Inc

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Holiday Inn
MitchellDate 5-19-04

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Roberta McIntee Mitchell Peterson's IncDonald E. Harris Mitchell SELFNorma Harris Mitchell SelfBob Weisz Mitchell SelfDon Allen MitchellMike Osty MitchellBuddy Herman MitchellBeverly K Carlson Mitchell Self.Linda McIntee Mitchell Peterson's Inc.Jim M'SD Mitchell Peterson's Inc.Beck Hayes Mitchell Self.Cecil Hales Mitchell Self.

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